IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3887 OF 1999

Kumari Vijaya Eknath Shinde
aged 32 years, Occ.Service,
R/o Natoli, Taluka Shirala,
District Sangli .. Petitioner

Vs

1. The State of Maharashtra
through the Secretary, School
Education Dept. Mantralaya,
Mumbai 400 032. ..
2. The Education Officer
(Secondary) Sangli Zilla
Parishad, Sangli ..
3. The Chairman
Shri Hanuman Shikshan Sanstha
Kanadur, Taluka Shirala,
District Sangli ..
4. The Head Master
Shri Ambika Kanya Vidyalaya
Kanadur, Taluka Shirala
District Sangli ..
5. Shri Shivaji Pandurang Patil
Asstt. Teacher,
Shri Ambika Kanya Vidyalaya,
Kanadur, Taluka Shirala
District Sangli .. Respondents

ALONGWITH

WRIT PETITION NO.4432 OF 2000

Shri Shivaji Pandurang Patil
Asstt. Teacher,
Shri Ambika Kanya Vidyalaya,
Kanadur, Taluka Shirala
District Sangli .. Petitioner

Vs

1. The State of Maharashtra
through the Secretary, School
Education Dept. Mantralaya,
Mumbai 400 032. ..
2. The Education Officer
(Secondary) Sangli Zilla
Parishad, Sangli ..
3. The Chairman
Shri Hanuman Shikshan Sanstha
Kanadur, Taluka Shirala,
District Sangli ..
4. The Head Master
Shri Ambika Kanya Vidyalaya

Kanadur, Taluka Shirala
District Sangli ..
5. Kumari Vijaya Eknath Shinde
aged 32 years, Occ.Service,
R/o Natoli, Taluka Shirala,
District Sangli .. Respondents

Shri N.V.Bandiwadekar for the petitioner in WP No.3887/99 and respondent no.5 in WP No.4432/00.

Shri S.S.Pakale for the petitioner in WP No.4432/00 and Mr.R.Todankar with Mr.S.S.Pakale for respondent no.5 in WP No.3387/99.

Shri S.R.Nargolkar AGP for respondent nos.1 and 2 in both petitions.

Shri J.K.Patil for respondent nos.3 and 4 in WP No.3887/99

CORAM : V.G.PALSHIKAR &
D.B.BHOSALE, JJ.
DATED : 20TH SEPTEMBER, 2005.

JUDGMENT (PER D.B.BHOSALE, J.)

1. These two writ petitions filed under Article 226 of the Constitution of India are being disposed of by this judgment since the parties in both the petitions are same and the issues involved are common.

2. The petitioner - Ms.Vijaya Shinde in Writ Petition No.3887 of 1999 has impugned order/letter dated 26.5.1999 issued by respondent no.2 by which her salary as Assistant Teacher has been reduced to D.Ed scale. This order was passed by respondent no.2 without issuing notice to the petitioner - Vijaya Shinde and/or without giving an opportunity of being

heard before reducing the salary from B.Ed scale to D.Ed scale.

3. The petitioner - Shivaji Patil in Writ Petition No.4432 seeks direction to respondent nos.2 to 4 to release his monthly salary in B.Ed scale as per past practise and to pay the arrears of salary since November, 1999. Though the petitioner - Shivaji Patil has specifically not prayed for implementation of the order dated 26.5.1999, in effect he is seeking its implementation and pursuant thereto the payment of salary in B.Ed scale. The petitioner - Ms.Vijaya Shinde in Writ Petition No.3887 of 1999 and the petitioner - Shivaji Patil in Writ Petition No.4432 of 2000 are joined as respondent no.5 in these Petitions.

4. Writ Petition No.3887 of 1999 was filed on 28th June, 1999. This petition was admitted on 21.7.1994 and interim relief in terms of prayer clause (c) was granted on 10.9.1999. Prayer clause (c) reads thus:

> "(c) Pending the hearing and final disposal of this Writ Petition the execution, operation and implementation of impugned order dated 26.5.1999 (Exhibit-F) issued by Respondent No.2, be stayed."

5. The petitioner - Shivaji Patil has filed Writ

Petition No.4432 of 2000 on 3.8.2000 after the interim order dated 10.9.1999 was passed in Writ Petition No.3887 of 1999 and served on him. It appears that in view of the interim order passed in Writ Petition No.3887/99 the respondents granted B.Ed scale to Vijaya Shinde with effect from November 1999 and as a result of the stay granted by this Court to the order/letter dated 26.5.1999, the pay scale of the petitioner - Shivaji Patil came to be reduced from B.Ed to D.Ed scale. In this circumstances he filed Writ Petition No.4432 of 2000.

6. The facts, as disclosed in both the writ petitions, reveal that in April 1997 Shivaji Patil was denied B.Ed scale without assigning any reason, probably in view of the orders passed by the School Tribunal on 4th June, 1996 in the appeal filed by Vijaya Shinde being Appeal No.106 of 1996. Shivaji Patil, therefore, made a representation dated 27.7.1997 to Education Officer against the reduction of his pay scale. Since his representation was not attended to by the Education Officer, Shivaji Patil challenged the said action by filing writ petition being Writ Petition No.579 of 1999. That writ petition was disposed of by the order dated 8.2.1999. The order passed in the Writ Petition reads thus:

"According to Shri Pakale, learned

> Counsel for the petitioner, the petitioner was working as a primary teacher. Salary was released to him from time to time. However, from 1997 onwards, Salary was not paid. Representations were made from time to time. One such representation dated 27/7/98 has addressed to Education Officer, Zilla Parishad, Sangli, which is annexed to the petition at Exh.C. The same has not been decided so far.
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> 2. Having regard to the grievance as canvassed, we feel that for redressal of grievance, notice is not required to be given to the Respondents. We direct that Zilla Parishad, Sangli, to decide the representation in relation to the payment of salary of the petitioner within a period of four weeks from today.
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> . With this direction petition is disposed of.
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> . Certified copy expedited."

7. Admittedly, Vijaya Shinde was not party in the said writ petition. Respondent No.2, in pursuance of the aforesaid order passed by this Court, decided the representation dated 27.7.1998 and communicated its decision to the respondent-Chairman of Shri Hanuman Shikshan Sanstha, Kanadur. This communication is impugned in the instant writ petition which directly affected the salary of Vijaya Shinde which came to be reduced from B.Ed to D.Ed scale. The order dated 26.5.1999 records that only one out of both (i.e. Vijaya Shinde and Shivaji Patil) is entitled for B.Ed scale and in view of the order of this Court dated 8.2.1999 the B.Ed scale will have to be given to Shivaji Patil and as a

consequence thereof Vijaya Shinde will have to be given D.Ed scale. It is thus clear that the Education Officer misread the order passed by this Court dated 8.2.1999 and decided the representation of Shivaji Patil possibly on the assumption that this Court had directed to give him B.Ed scale. In fact this court had only directed to decide the representation in relation to the payment of salary of the petitioner - Shivaji Patil within four weeks. The Education Officer committed grave error by proceeding on the wrong assumption, which directly affected the right of Vijaya Shinde for which no notice was issued to her. The principles of natural justice demand that such order cannot be passed without issuing notice and giving an opportunity of being heard to the person concerned. Mr.Pakale, the learned counsel for Shivaji Patil, though contended that Vijaya Shinde is not entitled for B.Ed scale, fairly admitted that the impugned order dated 26.5.1999 was passed behind the back of Vijaya Shinde and that the Education Officer ought to have given notice to her and an opportunity of being heard before reducing her salary from B.Ed scale to D.Ed scale. It is against this backdrop Mr.Bandiwadekar, learned counsel for the petitioner - Vijaya Shinde submitted that the order dated 26.5.1999 be quashed and the matter be remanded to concerned Education

Officer for deciding the representation of Shivaji Patil dated 27.7.1998 afresh as per the order dated 8.2.1999 and after giving notice and opportunity of being heard to Vijaya Shinde. This suggestion was not opposed by Mr.Pakale, learned counsel for Shivaji Patil. In the result we are satisfied that the following order shall meet the ends of justice:

a) The order/letter dated 26.5.1999 impugned in Writ Petition filed by the petitioner - Vijaya Shinde is quashed and set aside.

b) The Education Officer (Secondary) Sangli Zilla Parishad, Sangli shall decide the representation dated 27.7.1998 of Shivaji Patil as per the order dated 8.2.1999 afresh after giving notice and an opportunity of being heard to Vijaya Shinde as expeditiously as possible and preferrably within a period of three months from the date of receipt of this order.

c) The respondents shall continue to pay salary to Vijaya Shinde as Assistant Teacher in B.Ed scale, as they have been paying pending this writ petition, till the disposal of the representation dated 27.7.1998 and for a period of 30 days from the date of communication of the order, that will be passed by

respondent no.2 - Education Officer, in the event it is adverse to her.

d) Let us make it clear that we have not examined the merits of the contentions of both the petitioners insofar as their claim as to salary in

B.Ed scale is concerned. The Education Officer shall decide the representation, as aforestated, on merits in accordance with law.

. The writ petitions are disposed of accordingly.

(D.B.Bhosale, J.) **(V.G.Palshikar, J.)**

HIGH COURT AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3887 OF 1999
ALONGWITH
WRIT PETITION NO.4432 OF 2000

Date of Decision: 20th September, 2005.

For approval and signature:

The Hon'ble Mr.Justice : V.G. Palshikar

And

The Hon'ble Mr.Justice : D.B. Bhosale

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder?

5. Whether it is to be circulated to the Civil Judges?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?